IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4909 of 1997
with
SPECIAL CIVIL APPLICATION No 4861 of 1997
with
Special Civil Application No.4938 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HAREN PANDYA
Versus
GANDHINAGAR CHARITABLE TRUST

Appearance:
1. Special Civil Application No. 4909 of 1997
MR YN OZA for Petitioners
MR PARESH M DAVE for Respondent No. 1
Mr.S.N. Shelat, Additional Advocate General,
with Mr.D.P. Joshi, Assistant GOVERNMENT PLEADER,
for Respondent No. 2 to 5.
MR RS SANJANWALA for Respondent No. 8
NOTICE SERVED for Respondent No. 9,15
NOTICE UNSERVED for Respondent No. 12

2. Special Civil Application No 4861 of 1997
MR VIJAY H PATEL for Petitioners
Mr.S.N. Shelat, Additional Advocate General,
with Mr.A.D. Oza, GOVERNMENT PLEADER,
for Respondent.
NOTICE SERVED for Respondent No. 9,15
NOTICE UNSERVED for Respondent No. 12

3. Special Civil Application No.4938 of 1999
Mr.R.S. Sanjanwala, with Mr.Shirish Sanjanwala.
Mr.S.N. Shelat, Additional Advocate General,
with Mr.A.D. Oza, GOVERNMENT PLEADER, for Respondent.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/09/2000

C.A.V. JUDGEMENT: (Per P.B. Majmudar, J.)

1. Since there is a common point involved in all these three petitions, at the request of the parties, they are ordered to be heard together. The question involved is regarding giving charity of the lands at Gandhinagar practically at throwaway price. So far as Special Civil Application No.4909 of 1997 is concerned, same has been filed by one Haren Pandya and another, who, at the relevant time when the petition was filed, were M.L.As. of Bharatiya Janata Party (hereinafter referred as "B.J.P."). We may state that Mr.Haren Pandya has subsequently become a Minister in the State of Gujarat.

2. In the said Special Civil Application, they have challenged the Resolution of the Government, in its Roads and Building Department, by which it was resolved to allot 41000 sq. metres of land situated in Sector 8 of Gandhinagar to the Gandhinagar Charitable Trust, Gandhinagar, for the purpose of Balmandir, Primary School, Arts, Commerce, Science, Engineering, Business Management, Computer Science Colleges, hostel for boys and girls. The said Resolution was passed treating the said Gandhinagar Charitable Trust as "Educationally Special Institute" and as a "Special Case". By treating it as a special case and a special institute, relaxations

were also given in the existing policies of the Government in allotment of land without auction and at half of the prevalent rate of Rs.400/- per sq. metre, i.e. at the rate of Rs.200/- per sq. metre. It was also resolved to make allotment of the land for playground on lease at the token rent of Rs.1/- per annum. There were certain conditions attached with the said Resolution such as making part payment etc. Subsequently, by Annexure `B' the Trust was asked to pay Rs.82,00,000/- by way of sale consideration for the land admeasuring 41000 sq. metres. The said amount was to be deposited before the Collector, Gandhinagar. Instalments were also given for making such payment, by which the Trust was required to deposit 50% of the said amount of Rs.82,00,000/-, i.e. Rs.41,00,000/- towards first instalment, latest by 28.7.1997. On deposit of the same, the Collector, Gandhinagar was to hand over the possession of the land to the Gandhinagar Charitable Trust. The remaining amount of Rs.41,00,000/- was to be deposited by the Trust by 28.9.1997. The aforesaid relaxation was given as per Resolution Annexure `B' to the petition, passed by the Deputy Secretary, Road and Building Department, after taking consent from the Finance Department. The petitioner of Special Civil Application No.4909 of 1997 has also annexed a newspaper report, under the heading "Landing a Scandal". The petitioner of Special Civil Application No.4909 of 1997, on the basis of the aforesaid document, preferred the said Special Civil Application, challenging the aforesaid action of the Government in allotting land to the said Gandhinagar Charitable Trust, which is respondent No.1 in the petition. It is stated in the petition that the aforesaid Trust is headed by the then Chief Minister Shankersinh Vaghela and that as per the information of the petitioner, even though 73 applications were pending by various educational institutions and even though they are pending since number of years, ignoring the claim of such applicants, the Government has decided to favour respondent No.1-Trust. It is stated in the petition that undue favour is shown to the Gandhinagar Charitable Trust. It is demonstrated in the petition as to how the decisions one after another were taken in quick succession. It is also further averred in the petition that while taking such a decision and before passing the impugned Resolution dated April 29, 1997 no approval has been sought from the competent authority of the area and other authorities under the revenue laws, Town Planning Act, etc. It is also stated in the application that even otherwise, the respondent No.1-Trust does not have any experience of whatsoever nature regarding computer etc., and that the impugned Resolution was contrary to earlier

Resolution of the Government dated June 29, 1988, wherein certain norms are prescribed for allotting land by the Government. It is the say of the petitioner that the impugned Resolution is mala fide and it is passed only with a view to favour the Trust, wherein the sitting Chief Minister was one of the Trustees and it is a case of misusing a Government machinery. By way of amendment it was also pointed out that the respondent No.1-Trust was, at the relevant time a very recently registered Trust as the same was registered only on 8.8.1996. In the list of Trustees, name of Shri Shankersinh Laxmansinh Vaghela, who was the Chief Minister at the relevant time, was shown at serial No.1 in the amendment along with four other Trustees. It is pointed out that none of the Trustees are having any experience in the field of imparting education. Along with the amendment, the petitioners have also placed Resolution dated 29.6.1988, wherein certain guidelines have been prescribed in the matter of allotting land. This Court, by its order dated 9th July, 1997, granted leave to amend the petition and notice was made returnable on 28th July, 1997 on the basis of the statement made by the learned Advocate for the petitioners that the entire amount of Rs.82,00,000/is paid two/three days back. The Court also granted interim relief to maintain status quo as to possession upto 31st July, 1997.

3. Thereafter, by another order dated 6.8.1997, this Court granted permission to add all the Trustees as parties. The petition was admitted and rule was made returnable on 15.9.1997. Interim relief was also granted at that time to maintain status quo as to possession as well as construction. The Court clarified that it will be open to the Trustees to move paper work and process applications for permission, etc.

4. In the aforesaid Special Civil Application, affidavit-in-reply was filed by one V.K. Mehta, who was holding the office of Deputy Secretary in Roads and Building Department of the State of Gujarat at the relevant time. The said affidavit-in-reply was filed on behalf of respondents, 2, 3, 6 and 7. It was pointed out in the reply on behalf of the State Government that the Government has evolved a policy for the purpose of allocating lands at Gandhinagar for educational, social, religious and other allied purposes at concessional rates without holding auction. A resolution to that effect was passed on 29.6.1988. It was, therefore, stated that it was permissible on the part of the Government to allot land at Gandhinagar to the respondent No.1-Institution without holding auction. It is also stated in the reply

that application dated 15.11.1996 was moved by the respondent No.1-Trust seeking allotment of land for educational purpose in Sector No.8 of Gandhinagar and, thereafter, they also submitted necessary details and that the entire matter, along with the report of the Chief Town Planner, was placed before the Council of Ministers for the purpose of decision and that the Council of Ministers arrived at a conclusion in its meeting dated 12.3.1997 and 9.4.1997 and it was decided to allot in all 51000 sq. metres of land to the respondent No.1-Trust, on the basis of which subsequently, resolutions were passed, fixing the price for the land in question and allotting the same to the Trust. It is also pointed out in the reply that in addition to the respondent No.1-Trust, several other institutions were also granted such land at concessional rates at Gandhinagar. It was also pointed out that even in the past also, such allotments were made in favour of educational institutions without holding auction. Some of the particulars were also given in the reply to that effect. It was also stated that the decision to allot the land to respondent No.1-Trust has been arrived at by the Council of Ministers after taking into consideration all the relevant facts and circumstances of the case and that, therefore, there is no question of showing any favour to the respondent No.1-Trust. Therefore, on the basis of relying upon the Resolution of 1988 as well as the decision of the Council of Ministers to allot the land to the respondent No.1-Trust, ultimately, the impugned Resolution at Annexure `A' was passed. It was, therefore, prayed that the petition deserves to be dismissed.

5. Respondent No.8, Shankersinh Laxmansinh Vaghela, who was the Chief Minister at the relevant time, has also filed his affidavit-in-reply. It was stated by him in his reply that the allegations against him are baseless. He pointed out that he has not exerted any influence for grant of land to the Trust, though, incidentally, he is one of the Trustees of the said Trust. He pointed out that he had not remained present in the meetings of the Cabinet on 12.3.1997 and 9.4.1997. He also pointed out in his reply that the Trust had demanded 80000 sq. metres of land, while the Cabinet decision was only to award 41000 sq. metres of land and 10000 sq. metres towards playground. He pointed out that this very fact itself shows that he has not exerted any influence and that, in fact, he has not exerted any influence over any of his Cabinet colleagues or the concerned Ministers or the Officers of the State. He also pointed out in his reply that he became Chief Minister only on 23rd October,

1996, while the respondent No.1-Trust was registered before that date. It was also pointed out that the Trust was registered on 8th August, 1996 and that the Resolution for allotting the land in question was passed by the Trust on 20th October, 1996 and that the application for grant of the land was made on 15.11.1996. It was pointed out that the respondent No.1-Trust has taken over the Management of the Arts and Commerce College at Gandhinagar from one Samarpan Seva Trust. He accordingly denied the allegations which were levelled against him.

6. On behalf of the respondent No.1-Trust also, affidavit-in-reply was filed, which is at page 113 of the compilation. It was pointed out in their reply in paragraph 5 that this public interest litigation at the instance of the petitioners is not maintainable as they are M.L.As. belonging to the B.J.P. and since B.J.P. is out of Government and respondent No.8 has become the Chief Minister, this petition is filed only with a view to tarnishing the image of the respondents by way of mud throwing, since the petitioners have not accepted the fact that they have gone out of power. It was also pointed out by the Trust in the reply that even during the regime of the B.J.P. Government, such allotments of lands have been made at the same rate. Instances of such allotment have also been given at page 116 of the reply. It was pointed out by the Trust that the decision of the Government was just and proper and that all allegations made in the petition are baseless.

7. It is required to be noted that during the pendency of the present petition, there was a change in the Government and the B.J.P. Government came into power and the petitioner No.1 of Special Civil Application No.4909 of 1997 became Minister in the new Government. The new Government took a policy decision to review decisions, which were taken by the earlier Government and for that purpose, Sub-committee of Cabinet was formed. The Sub-committee appointed by the Government consisted of various Ministers, such as Messrs. Suresh Mehta, Vajubhai Wala, Ashok Bhatt, Jaynarayan Vyas and Haren Pandya. The said Committee was to examine various decisions which were taken by the earlier Government. So far as the allotment of land to the respondent No.1-Trust is concerned, the said decision was also subject matter of review of the said Committee. It was opined by the Sub Committee, in its report, that when the application for grant was made by the Trust, the said Trust was not having any recognized Arts and Commerce College in Gandhinagar as the said college was run by another Trust.

The Committee also observed that certain false informations were given by the Trust for the purpose of getting the allotment of land in their favour. It was also stated in the report that even though there were other 73 claimants for the purpose of getting land for educational institution, without considering their priority, favouritism was shown to the respondent No.1 and that was possible only because one of the Trustees Shri Shankersinh Vaghela was the Chief Minister. It is also pointed out in the report that in the Cabinet meeting of 9th April, 1997, Shri Shankersinh Vaghela as the Chief Minister presided over the said meeting and in that meeting, it was decided to allot the land. The Committee also found that there were some erasures in some documents which is doubtful in nature. It is stated that letter dated 12.3.1997 is a subsequently got up letter. It was found that Shri Shankersinh Vaghela has misused his office and had committed a fraud for getting financial benefits. It was found that the said action of said Shankersinh Vaghela is fraudulent and is criminal in nature. It was recommended that criminal proceedings should be taken against said Shankersinh Vaghela and others.

8. On the basis of the aforesaid report of the Sub-committee of the Cabinet, the Roads and Building Department of the State of Gujarat passed an order dated 7.7.1999, by which the grant given in favour of the aforesaid Gandhinagar Charitable Trust was cancelled, and the Collector, Gandhinagar was asked to pay back the amount of Rs.82,00,000/- paid by the said Trust without interest. The Trust was asked to hand over the possession to the Government. The said order was passed with the concurrence of the Finance Department.

9. Being aggrieved by the said decision, Gandhinagar Charitable Trust has filed Special Civil Application No. 4938 of 1999. The said petition initially came up for admission before a learned single Judge. The learned single Judge, by his order dated 12.7.1999, directed that the said petition, being Special Civil Application No.4938 of 1999, may be placed before the First Court as the said petition appears to be continuation of the dispute raised in Special Civil Application No.4909 of 1997. Thereafter, a Division Bench issued notice in the present petition, i.e. Special Civil Application No.4938 of 1999, and in view of the interim order passed in earlier petition, i.e. Special Civil Application No.4909 of 1997, the interim relief was granted to the effect that the respondents are restrained from taking possession of the property pursuant to the impugned

order. The interim relief is continued from time to time and the matter was adjourned from time to time.

10. In Special Civil Application No.4938 of 1999, affidavit-in-reply has been filed by Shri Haren Pandya, who is the petitioner of earlier Special Civil Application, i.e. Special Civil Application No.4909 of 1997, and who has now become Minister of State for Home. He has filed an affidavit-in-reply setting forth various grounds.

Affidavit-in-reply has also been filed by the State of Gujarat and has tried to justify the action of the State Government as per the averments made in the said reply.

11. In the meanwhile, Special Civil Application No.4861 of 1997 has been filed by one Shradha Kelavani Mandal, wherein the said Trust has prayed to allot land to the petitioner-Trust to establish school building for its running school. In that petition, reference to allotment of land to Gandhinagar Charitable Trust has been made. It is pointed out in this petition by the Trust that there is a discrimination and if said Gandhinagar Trust was given such a big piece of land, there is no reason not to give similar treatment to the petitioner of Special Civil Application No.4861 of 1997. A learned single Judge ordered that the aforesaid Special Civil Application No.4861 of 1997 is required to be placed with Special Civil Application No.4909 of 1997 and accordingly, the same was also referred to the Division Bench.

12. Under the aforesaid background, aforesaid three Special Civil Applications have come before us and we are disposing of all these three Special Civil Applications finally after considering at great length the arguments advanced by all the concerned Advocates. By this common judgment, accordingly we are disposing of all the aforesaid three Special Civil Applications.

13. So far as Special Civil Application No.4909 of 1997 is concerned, during the pendency of the Special Civil Application, since the grant made in favour of Gandhinagar Charitable Trust is already cancelled, and since that cancellation is subject matter of Special Civil Application No.4938 of 1999, we have heard arguments of Mr.Sanjanwala for the petitioner of the said petition, i.e. Special Civil Application No.4938 of 1999. Mr.Sanjanwala for the petitioner of Special Civil Application No.4938 of 1999 has argued that in view of

the grant in favour of his client having been cancelled, the earlier P.I.L. filed by Mr.Haren Pandya and another has become infructuous. However, Mr.Y.N. Oza for the petitioners of Special Civil Application No.4909 of 1997 has submitted that since cancellation of grant is under challenge in Special Civil Application No.4938 of 1999, he would not like to withdraw the petition on the ground that it has become infructuous. Under these circumstances, we have heard Special Civil Application No.4938 of 1999 at great detail and arguments of both the sides have been heard at length. We are accordingly dealing with the points involved in Special Civil Application No.4938 of 1999 and the argument of both the sides in the aforesaid matter.

14. During the pendency of the petition, i.e. Special Civil Application No.4938 of 1999, draft amendment was submitted by the petitioner, by which permission was sought to add Deputy Secretary, Roads and Buildings Department, as party and the order dated 7th July, 1999, cancelling the grant, was subsequently placed on record as Annexure `F' and the said order was specifically challenged. It was also stated in the draft amendment that the order at Annexure `F' is passed against the principles of natural justice, because the petitioner was not given any show cause notice before passing the order, nor was he heard, no details about the report of the Sub-Committee are given to the petitioner and that, therefore, no document can be relied upon against the party without giving the party an opportunity of being heard. It is also averred in the amendment that the impugned order is not a speaking order and that Sanad having already been issued and since the petitioner is already in possession, the possession cannot be taken away from the petitioner without resorting to the civil court. The amendment was granted by the Court on 15.7.1999.

15. The Deputy Secretary, R&B Department of the State of Gujarat has filed affidavit-in-reply. He submitted that former Chief Minister Shri Shankersinh Vaghela executed a Trust Deed dated 2nd August, 1996, constituting the Gandhinagar Charitable Trust. The Trust was registered on 8th August, 1996. A meeting of the Trust was held on 20th October, 1996, which was presided over by Shri Shankersinh Vaghela. In that meeting, it was resolved that the Trust should prefer an application for allotment of land for the Trust. On 15th November, 1996, Shri Sumanbhai Patel, Honorary Secretary, Gandhinagar Charitable Trust, addressed a letter to the Secretary, Roads and Buildings Department, Sachivalaya,

Gandhinagar, requesting the Government to allot the land to the Trust on the ground that the Trust was running an Arts & Commerce College at the Shopping Centre, Sector 8, Gandhinagar, and that there was open land available behind the shopping centre. Copies of the Resolution dated 20th October, 1996 and the letter dated 15th November, 1996 are annexed along with the affidavit-in-reply. It is also stated in the affidavit-in-reply that, subsequently, demand for some more land was also made on the ground that in addition to running of the Arts & Commerce College, the Trust was interested in setting up a Bal Bhavan, a Prathmik Shala and a Madhyamik Shala, and also wanted to provide for Technical and Management education. The letter of the Trust to that effect dated 17th December, 1996, was also annexed with the reply. One Shri C.J. Chavda, Special Officer in the Chief Minister's Secretariat, addressed a Note to the Secretary, Roads & Buildings Department, that there were directions to take proper steps for allotment of 20 acres of land to the Gandhinagar Charitable Trust. The Chief Town Planner reported to the Secretary, Roads & Buildings Department, by his communication dated 13th January, 1997, about the application of the petitioner-Trust and stated that the financial viability of the petitioner-trust also remains to be ascertained since crores of rupees would be required for construction. On 28th January, 1997, the Chief Town Planner, had further reported that the lands required by the Trust in Sector 8 were reserved for commercial purpose and that this commercial area could be reduced since there is meagre population in the nearby Sectors 1 and 9. It is further submitted that there is a Trust named Samarpan Sewa Trust, Vasan, which was running the Arts & Commerce College. It was granted affiliation by the Gujarat University with effect from June, 1996, for running an Arts & Commerce College at Gandhinagar. The Notification dated 24th June, 1996 was issued by the Gujarat University that Samarpan Sewa Trust, Vasan, is permitted to open a new Arts & Commerce College at Gandhinagar. It was submitted that the Education Department of the State of Gujarat also addressed a letter to the Registrar of the Gujarat University that no grant will be released in favour of Samarpan Sewa Trust for a period of seven years. It is further stated in the reply that from the record, it does appear that when the Resolution was passed by the Gandhinagar Charitable Trust and subsequently made application to the State Government for allotment of land, the Trust was not running any Arts & Commerce College at Gandhinagar, as indicated in their application. It is specifically stated in the affidavit-in-reply that there is nothing on the record to

show that the petitioner-Trust was running an Arts & Commerce College at Gandhinagar. It is also stated in the reply in paragraph 2.6 that a Cabinet Meeting was held on 12th March, 1997, presided over by the then Minister for Industry, in which a proposal for grant of land for educational purpose in favour of the Gandhinagar Charitable Trust was approved, in principle, and a Sub-committee, consisting of the former Ministers Shri Atmarambhai Patel, Shri Babubhai Shah and Shri C.K. Raolji, was appointed, for taking a final decision regarding the terms and conditions, area and price of the land to be allotted. At the Cabinet Meeting, the report of the Sub-committee dated 12th March, 1997 was taken note of that the Gandhinagar Charitable Trust was to be allotted 51000 sq. metres of land, instead of 61000 sq. metres and that the price of the land be fixed in the like manner as was allotted to the Akhil Anjana Kelavani Mandal. The recommendations were approved on 9th April, 1997. It is emphatically stated that Shri Shankersinh Vaghela presided over the said meeting, and the facts narrated above indicate that a conscious decision was taken by the cabinet in favour of the petitioner-Trust, of which the former Chief Minister was one of the Trustees. Not only that, it is also stated in paragraph 2.12 of the reply that by letter dated 30th December, 1997, addressed from the Chief Minister's Secretariat to the Secretary, Roads & Buildings Department, request was made that the application of the Gandhinagar Charitable Trust be expeditiously considered. It is also further stated in the affidavit-in-reply that the Note put up by the R&B Department stated that there were several applications from various other Trusts pending for allotment of land, and that in the policy order dated 29th June, 1988, there were no norms for the quantum of land to be allotted for colleges. In fact, the market price prevailing in Sector 8 was shown to be Rs.3,060/per sq. metre, while, in the instant case, the price fixed for the land on the basis of development cost was Rs.400/- per sq. metre and subsequently, it was reduced to Rs.200/- per sq. metre. It is further stated in the affidavit-in-reply that there is a Master Plan approved by the State Government in 1966, which defines the planned city location for all uses. For educational use, provision made in the planing of Gandhinagar is as under :-

(1) For Colleges - in Sector-15.
(2) For schools of various levels 1 to 4 plots in each residential sector.
(3) For Bal Mandir 3 plots in each residential sector.

It is clearly stated at page 46 in the reply that after 1988, there has been hardly any allotment of large plots of land in favour of educational trust. It is also stated that four plots have been defined for allotment for school in Sector-8 and three of them were already developed when the petitioner preferred the application. The land requested for allotment was reserved and proposed as "District Commercial Area". The demand for the present allotment made by the Trust was because the College was in the Shopping Complex. This shopping complex was allotted in favour of Samarpan Sewa Trust. The shops were allotted on rental basis by the State Government. It is also stated that even as per the Resolution dated 29th June, 1988, more lands are allotted for playground, while for built-up allotment made is less, but in the instant case, allotment of 41000 sq. metres of land has been made for built-up purpose and 10000 sq. metres for playground. It is also stated in the affidavit-in-reply at page 47 that the Resolution dated 29th June, 1988 provides for consideration of grant of land in favour of special educational institutions, such as institutions promoting the welfare of the physically handicapped, deaf and dumb and such other students. It is submitted that the petitioner-Trust did not possess such qualifications for the purpose of seeking the benefit of concessional grant. Under the aforesaid background and considering the aforesaid state of affairs, the present Government resolved to review and reconsider the entire decision of the previous Government for allotment of land in favour of the petitioner-Trust. It is stated that the Government was of the opinion that it was competent to reconsider its own decision when the aforeaid facts have been brought to the notice of the State Government.

16. At this stage, it is pertinent to note that so far as the the letter sent by the Trust to the Secretary, Roads and Buildings Department dated 15.11.1996 is concerned, a copy of the same was also sent to the Chief Minister Shri Shankersinh Vaghela. The aforesaid letter is annexed with the affidavit-in-reply of the State Government at page 56. Though in the affidavit-in-rejoinder filed by Shri Shankersinh Vaghela, Trustee of the petitioner-Trust, he has stated that he had not remained present in the meeting dated 12th March, 1997.

17. Mr.Haren Pandya, who was the petitioner of earlier petition, i.e. Special Civil Application No.4909 of 1997, has also filed his affidavit-in-reply. In his

affidavit-in-reply, he has stated that he was of the bona fide belief that the grant of the land in favour of the Gandhinagar Charitable Trust was conferring largesse in favour of Shri Shankersinh Vaghela, the then Chief Minister of the State, who was one of the Trustees of the said Trust. He has stated in his reply that when he preferred Special Civil Application No.4909 of 1997 on 8th July, 1997, challenging the allotment of land in favour of the petitioner-Trust and this Court passed the order of status quo, on the very same day, the petitioner-Trust overreached the writ of this Court, and in spite of the fact that the Trust has financial difficulties, and initially, it sought suitable instalments for effecting the payment, the Trust made the payment of Rs.82,00,000/- on the very same day and managed to obtain possession from the State Government in hot hurry. It is also stated in the reply by Shri Pandya that when the present Government took over the administration of the State, he was inducted as the Minister of State for Home and the Government resolved that all controversial decisions taken by the predecessor Government were required to be reviewed and a Sub-committee was appointed for that purpose and he was one of the members of the said Sub-committee and in public interest, he had participated in the proceedings. It is also submitted that from the facts revealed from the record of the case, the Sub-committee bona fide has come to the conclusion that the decision to allot the land in favour of the petitioner-Trust was not justified and it was an act of favouritism in favour of the petitioner-Trust. He further submitted that there was no bias, as alleged against him.

18. Mr.Sanjanwala has argued the following points :-

(1) There was no reason to cancel the grant which was made in favour of the petitioner as at the relevant time, after considering all the facts and circumstances of the case, and after considering earlier policy and decisions, the land was granted in favour of the petitioner-Trust and according to him, therefore, there was no reason to cancel the aforesaid grant by the subsequent Government;

(2) The decision in question is based on political vendetta as the petitioner of Special Civil Application No.4909 of 1997 has subsequently become Minister in the new Government and subsequently he became a member of the Sub Committee appointed by the Government for

reviewing the decisions of the earlier Government. Mr.Haren Pandya who was a member of the Sub Committee, was prejudicial against the petitioner and, therefore, the decision arrived at on the basis of the report of such committee is prejudiced, biased and contrary to the principles of natural justice. In any case, Mr.Haren Pandya should not have continued to be a Member of the Sub Committee in so far as the cancellation of the grant against the petitioner-Trust is concerned, as he was the petitioner in the earlier petition;

(3) The then Chief Minister Shankersinh Vaghela has not remained present in the meeting of the Cabinet which decided to allot the land to the petitioner-Trust and that he had not played any role and, therefore, it cannot be said that the then Chief Minister Shankersinh Vaghela had played active role in so far as the allotment of the land in favour of the petitioner-Trust is concerned;

(4) In any case, since possession of the land is already given to the Trust and thereafter Sanad has already been issued, the possession cannot be taken away without obtaining decree from the civil court as in view of Sanad, the petitioner has acquired title over the land in question;

(5) That even otherwise, on merits, the decision of the earlier Government was right and, was not required to be disturbed by the subsequent Government; and

(6) That in any case, the Government could not have filed contradictory affidavits, i.e. one filed in Special Civil Application No.4938 of 1999 and another in Special Civil Application No.4909 of 1997.

19. Against the aforesaid argument, learned Additional Advocate General Mr.Shelat for the State has argued that there were many infirmities in the earlier decision, that in Sector No.8 at Gandhinagar, no permission for establishment of colleges could have been given. He also submitted that there were other 73 applications which were pending and similar prayer for allotment of the land was made and, therefore, no priority could have been given to the petitioner-Trust. It was stated by him that the petitioner-Trust was not

entitled to get allotment of the land as per the Resolution of 1988 and it could not have been treated as a special case. He, therefore, submitted that the decision of the subsequent Government was proper and that this Court, exercising powers under Article 226 of the Constitution of India, should not interfere with the said decision. He also further argued that the Review Committee, after its subjective satisfaction of the various cases, has given its report. He submitted that Mr.Haren Pandya, even though a member of the Sub Committee, was not the decision making authority and, therefore, he having become a member of the Committee itself cannot be a ground for setting aside the decision of the Government, by which the earlier grant was cancelled. He submitted that even otherwise, there is ample material on the record to show that the then Chief Minister had an active participation and had played an important role for the purpose of allotting the land in question to the Petitioner-Trust. He has also relied upon certain correspondence which were made from the Office of the Chief Minister. Mr.Shelat has also produced the original file for the court's perusal. He submitted that in that view of the matter, there is no substance in the petition and the decision cancelling the grant cannot be said to be arbitrary, illegal or discriminatory or cannot be said to be based on political vendetta. Mr.Haren Pandya who has subsequently become Minister has also filed detailed affidavit-in-reply and stated that the decision of the Sub Committee was bona fide and is based on material on record.

20. Mr.Shelat, learned Additional Advocate General, has further argued that if the petitioner-Trust submits fresh application with proper material, the same will be considered on merits and even the priority of the petitioner-Trust from the date on which it had given earlier application can also be taken into consideration.

21. On behalf of the petitioner-Trust, a statement has also been placed on record, signed by one of the Trustees of the Trust, wherein they have shown inclination to withdraw the petition, stating that they are willing to withdraw the petition, provided the request of the petitioner-Trust to allot the land may be considered by the State Government in its independent Committee and a decision may be taken to allot the land to the petitioner. In the said proposal, it is also requested that the date of the priority of the petitioner's application which it had already made, should be the basis for deciding its claim again. It is stated that ultimately if decision is taken to allot some

lesser area, the petitioner will surrender the remaining part of the land. It is also stated in the said proposal that if the land is allotted in any other area in Gandhinagar, the petitioner will surrender the present land. It is also stated that the petitioner reserves right to file an independent petition if the decision is against the petitioner. However, learned Additional Advocate General submitted that the Government has no objection to decide the representation of the petitioner, but the Trust should first hand over the possession of the land in question. Since there was no agreement on that account, ultimately, the proposal given by the petitioner could not materialize and, therefore, the same could not be given any effect and the matter is accordingly heard on merits.

22. So far as the first argument of Mr.Sanjanwala that there was no basis for cancelling the earlier grant is concerned, we are of the opinion that there is hardly any substance in the said argument. At the relevant time, it is not in dispute that there were 73 other applications, which were pending before the State Government and all the 73 applications were required to be considered on merits along with the application of the petitioner-Trust. There was absolutely no reason to give priority only to the application of the petitioner-Trust. If ultimately after considering all the applications on merits, any genuine decision was taken in favour of the petitioner-Trust, that would stand on a different footing, but, when so many applications were pending before the Government, there was no reason to discriminate other claimants and giving top priority only to the petitioner-Trust, and granting such a big piece of land to the petitioner-Trust. It is also pertinent to note that when the petitioner-Trust preferred an application for allotment of land, the Trust was not running any Arts & Commerce College at Gandhinagar. From the documents on record, it is clear that Shri Shankersinh Vaghela, who was holding the post of Chief Minister at the relevant time, was one of the Trustees and as per the report of the Sub-committee, he was the President of the Trust. When the meeting of the Trust was held on 20th October, 1996, the same was presided over by Shri Shankersinh Vaghela. In that meeting, it was resolved that the Trust should prefer an application for allotment of land for the Trust. It is also pertinent to note that after passing the Resolution, the Trust made application to the Government for allotment of land and at that time, when application was made, it was not running any Arts & Commerce College at Gandhinagar. However, in their application, they have not stated that

they are not running any Arts & Commerce College. It is difficult to understand how the Previous Government thought it fit to allot such large piece of land to the petitioner-Trust when there was nothing on the record to show that it was actually running Arts & Commerce College at Gandhinagar. It is pertinent to note that there is an application dated 11th February, 1997 from the Arts & Commerce College, Gandhinagar, run by the Samarpan Sewa Trust, through its Principal requesting for allotment of land in Sector 8, Gandhinagar. The Secretariat of the Chief Minister has also addressed certain correspondence to the concerned Government Department for expediting the things. In the Master Plan approved by the State Government in 1966, for educational use, provision was made in the planning of Gandhinagar and so far as college is concerned, it is shown in Sector 15, for schools of various levels, 1 to 4 plots in each residential sector, and for Bal Mandir, three plots in each residential sector. Therefore, so far as the college is concerned, the aforesaid college activity could have been started only in Sector 15. As stated in the reply, there was no allotment of large plots of land in favour of Educational Trust. It is also stated in the reply that four plots have been defined for allotment for school in Sector 8, and three of them were already developed when the petitioner-Trust had preferred the application. The land requested for allotment was reserved and proposed as District Commercial Area. In that view of the matter, considering the aforesaid material and documents on record, the land in question could never have been allotted to the petitioner-Trust even as per the policy made, which was required to be followed, especially when several applications from various other Trusts were pending for allotment of land. The Resolution dated 29th June, 1988 stipulates that more lands are allotted for playground, and for built-up, allotment made is less. The aforesaid Resolution is given a go-by and for built-up purpose, allotment made was 41000 sq. metres and allotment for the purpose of playground was 10000 sq. metres. Even otherwise, this can never be said to be a case, wherein an educationally special institute is given allotment of land as a special case, because as per the say of the Government in the present affidavit-in-reply, allotment could be made only for special educational institutions, such as institutions promoting the welfare of the physically handicapped, deaf and dumb and such other students. The petitioner-Trust can never be said to be coming in the aforesaid arena and, therefore, the case of the petitioner-Trust could never have been considered as a special case.

We also perused the file submitted by Shri

Shelat, learned Additional Advocate General, and we have seen that there is a noting to the effect that on payment of 50% of the amount towards first instalment, possession is to be handed over. Below the said noting, the Chief Minister has also signed. Even the Gandhinagar Charitable Trust wrote a letter to the Secretary, Roads and Buildings Department and copy of the same was also sent to the Chief Minister Shri Shankersinh Vaghela at the relevant time. There is also a letter from the Department of Industry, Ministry of Industries, dated 12.3.1997, wherein they have referred to the demand of the petitioner-Trust. In the said letter, it is stated that though the demand is for 80000 sq. metres and even though the said demand is justified, as it is for educational purpose, in Sector 8, for which demand was made, the total land available was only 61000 sq. metres and, therefore, it is not possible to grant full demand and that under these circumstances, 51000 sq. metres of land can be given. The aforesaid letter seems to have been made on the basis of report of the Sub Committee. It is, therefore, not possible to believe that there was any special case in favour of the petitioner-Trust, by which rules, norms or regulations can be bypassed. It is unfortunate that such a large piece of land, which was meant for the citizens of the Town, is tried to be gifted away at a throwaway price and looking to the correspondence and the way in which the things have moved, we have no doubt in our mind that the then Chief Minister Shri Shankersinh Vaghela has played an active role in seeing that such a large piece of land is made available to the Trust, of which he is one of the founder members. The way in which the things have been expedited, the way relevant facts have not been considered while granting the application and the fact that even in Master Plan, Sector 15 was reserved for institutions like colleges and even though 73 other applications by other educational institutions were pending, preference was given to this Trust, treating it as "an educationally special institute" and as "a special case". This really suggests that only in order to oblige the petitioner-Trust, the impugned decision was taken by the previous Government. Though of course there is some dispute as to whether the then Chief Minister Shri Shankersinh Vaghela was present during the Cabinet meeting or not, according to us, that would hardly make any difference. However, we may state that even from his office, there was correspondence of his Secretary, asking some Departments to expedite the aforesaid case of allotment of land to the petitioner-Trust. It is pertinent to note that when the application was made, there was no school and college, which was run by this

Trust. It must be said to the credit of the Education Department that at the relevant time, it gave opinion that the Roads and Buildings Department should fix some parameter for giving land for educational purpose and it had also pointed out that other 73 applicants/Trusts had also applied for similar purpose. It, therefore, seems that since the Trustees of the petitioner-Trust were having high influence, bypassing all norms and decency, allotment of land in favour of the Trust was made. The report of the Cabinet Sub-committee, which is annexed with the affidavit-in-reply, states that in the Cabinet Meeting dated 9.4.1997, it was decided to allot the land to the petitioner-Trust and that the Cabinet Meeting was presided over by Shri Shankersinh Vaghela. It was found that some of the documents were subsequently changed and some erasures were made in the document. However, as stated earlier, we may not go in detail whether Shri Shankersinh Vaghela, the then Chief Minister, presided over the meeting or not. However, the things speak for themselves and the way in which the application was made and the decision was taken, it is clear that it was nothing but a case of favouritism in favour of the petitioner-Trust. In view of the aforesaid, we are of the opinion that there is no substance in the first contention of Mr.Sanjanwala that there was no reason to cancel the grant which was made in favour of the petitioner-Trust. Subsequently, if the Government thought it fit to reconsider the earlier decision and if there is sufficient material on the record for coming to that conclusion, it cannot be said that the decision arrived at for reviewing the earlier decision was in any way bad in law or that it was passed by way of political vendetta. As a matter of fact, the Chief Minister is in the capacity of the Trustee for the people at large. If there is remote personal interest, the same was required to be sacrificed as against the larger public interest. When there was a conflict between the public interest and personal interest, the personal interest was required to be scarified. Conduct of a person holding such high office should be such that nobody can point an accusing finger at him. In the instant case, unfortunately, the person holding such a high office has only considered his own selfish interest and during his office as Chief Minister, large area of land has been allotted to the Trust, of whom he was the Founder Member and Managing Trustee. In fact, his decision and action should have been of such an exemplary nature that others can emulate such actions. If a person, who is at the helm of administration of State affairs, himself tries to take away property at throwaway price, then no fault can be attributed to any one who is acting in a similar fashion.

We have no doubt in our mind that it is only because of the influence of Shri Shankersinh Vaghela, who was holding the office of the then Chief Minister, that the petitioner-Trust got benefit of such land at a throwaway price and that too, by bypassing the claim of 73 other applicants for similar benefits and also by getting permission for college in Sector 8, which was not meant for the same, and also treating the aforesaid case as of an "educationally special institute" and as a "special case", even though it could not have been considered in any manner as a special case. Why it is considered as a special case is not difficult to understand. Unfortunately, Shri Shankersinh Vaghela has misused the powers and has clearly abused his powers and he has also misused the governmental machinery which has ultimately resulted in getting order in favour of his Trust, which was, of course, rightly reviewed by the subsequent Government.

Mr.Shelat has also relied upon the judgment of the Supreme Court in Angarki Cooperative Housing Society Ltd. v. State of Maharahstra and others, AIR 1997 SC 764. In the aforesaid case, the Secretary of the Department of Revenue himself was the Promoter of the Society in question in whose favour the allotment was made. The Apex Court found that there is patent clash in interest and duties of the said Secretary and on that basis allotment was cancelled. The Apex Court observed in paragraph 6 as under :-

> "... The facts clearly show that there was no lay-out of the area. There is nothing on the record to show that a plot for allotment was available. In fact a plot was created out of Government lands as a special case and was allotted to the Society. There can be no doubt that but for the status and the position Ranganathan was holding, it could not have happened. Ranganathan was personally interested in the allotment of plot for the Society of which he was a promoter. Ranganathan himself was a Secretary in the Department of Revenue. The Collector and all other officers were his colleagues/subordinates. We have no hesitation in holding that there was patent clash in the interest and duties of Ranganathan .... "

The approach of undermining the relevant law and the rules made thereunder, imposing and arrogating one's authority above the law is something which is not only distasteful, but is rather a total affront to the Constitution and the system of the Rule of Law. Everybody must understand that what is sovereign and supreme in our country is the Constitution, the Law and the Rules made thereunder and not any person or authority, howsoever highly placed the said person or authority might be.

It has been observed by the Honourable Supreme Court in case of Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and others, AIR 1987 SC 294, in paragraph 51 as under :-

> "... 51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the Courts should not and cannot remain mute and dumb .... "

The manner in which the orders for grant of land etc. were made are all really suggestive as to how the then Chief Minister has misused his powers. It is a sad story that although the said observations have been made by the Honourable Supreme Court as back as in 1987, the things have remained the same and perhaps, the decline of public standards and public morals are at even a faster rate as on today. We hope and trust that in future, those who are in administration of public affairs may act with absolute honesty, integrity and purity so that nobody can raise any accusing finger on their actions.

It is required to be noted that the Gandhinagar Charitable Trust made arrangement with Samarpan Seva Trust, whereby the management of the College was handed over to the Gandhinagar Charitable Trust and a letter was addressed to the Registrar, Gujarat University, on 6.10.1996, under signature of Managing Trustee. The letter is a typed one; however, date, month and year are in handwriting. Gujarat University on 6.12.1996, while informing that application is granted, not referred the date of the letter. Said Samarpan Seva Trust has made an application to the State for land for Institute.

The persons, who are in charge of the administration, should know that ultimately, whatever may be the decision, it should be taken for the benefit of the people at large. If those who are in power start taking away the property, then it may result into chaos. Those who are in charge of public affairs and administration should be more duty conscious, rather than trying to achieve their personal selfish objects. There should be an exhibition of duty and responsibility towards the people and the greed of personal benefit should be tried to be avoided as much as possible so that an ideal example can be set for the people at large. Unfortunately, in the instant case, we are satisfied that the person in charge of administration has not acted in an independent manner and having keen interest in the matter has taken a decision in favour of the Trust and others have legitimately complained about the loss suffered by the impugned action, wherein large area of land, which ultimately belongs to the people at large, being the Government land, is given practically in the nature of bounty to the petitioner-Trust.

At the cost of repetition, we may say that there was absolutely no reason given why other 73 applications were bypassed, which were earlier in point of time and why the favourable decision was taken only in favour of the petitioner-Trust, treating it as the case of an "educationally special institute" and as a "special case". It cannot be said that the Trust was possessing any outstanding merits or qualities, by which the case could have been treated as a special case nor it was an institution for physically handicapped students. All concerned and all Departments knew that the Chief Minister was interested in the subject matter. It is also pertinent to note that under Article 164(1) of the Constitution of India, the Ministers are appointed by the Government on the advice of the Chief Minister and they hold the office during the pleasure of the Governor. Therefore, even if the Chief Minister may not have taken part when the decision was taken by the Cabinet, it cannot be ignored that the Chief Minister himself was interested in the land in question for the benefit of his own Trust. We accordingly do not find any substance in the argument of Mr.Sanjanwala that there was no reason to cancel the grant which was made in favour of the petitioner-Trust and that the same was granted as per the policy prevailing at the relevant time or that said benefit was given to the others in the past.

23. So far as the second submission of Mr.Sanjanwala

regarding violation of the principles of natural justice and the decision being vitiated by prejudice and the decision being based on political vendetta is concerned, we are of the opinion that there is equally no substance in the argument. We have pointed out as to how the decision which was taken by the earlier Government was not only illegal, but was also contrary to public interest. As stated earlier, no college could have been established in Sector 8. In spite of several applications pending even for setting up educational institutions, undue preference was given to the petitioner-Trust without considering other applications on merits and the Sub-committee appointed by the Government has considered the relevant facts and circumstances and, thereafter, reached the conclusion to revise earlier decision. Mr.Sanjanwala, however, argued that Mr.Haren Pandya, who was the petitioner of earlier petition, i.e. Special Civil Application No.4909 of 1997, could not and should not have continued to be a member of the Sub-committee as he was naturally having bias against the petitioner. According to Mr.Sanjanwala, in view of the fact that Mr.Haren Pandya was a member of the Sub-committee, the decision of the Sub-committee is contrary to the principles of natural justice and that the decision which was ultimately arrived at was naturally based on the report of the Sub-committee, of which Mr.Pandya was a member.

Mr.Sanjanwala has relied upon certain decisions on this aspect. He has relied on the judgment of the Honourable Supreme Court in M/s.J. Mohapatra & Co. and another v. State of Orissa and another, AIR 1984 SC 1572, wherein the Honourable Supreme Court had an occasion to deal with the selection of books for school and college libraries by the State Government on recommendation of committees constituted by it. He has relied upon paragraph 11 of the said judgment which reads as under :-

> "... 11. It hardly requires any arguments to show that a person who has written a book which is submitted for selection, either by himself or by his publisher, is interested in the matter of selection. Authors get their books published by publishers or may themselves publish them. In either case, they stand to benefit financially. In the first case, by getting royalty from publishers and in the second case, by making profits on the sale of books if the amount realized exceeds the

cost of publication or, if the sales are not to that extent, by reducing the cost incurred in the publication of the book. The appellant have filed statements showing the financial benefit which accrued to those members of the Assessment Sub-Committee whose books were selected. To give one instance from these statements, in the case of a member of the Assessment Sub-Committee who was a Government official and whose books were selected, books of the aggregate value of Rs.4,000 were purchased in the year 1980, of the aggregate value of Rs.6,500 in the year 1981, and of the aggregate value of Rs.72,500 in the year 1982. It was contended in the counter-affidavit filed on behalf of the respondents that the amount of royalty received by these member-author was not much. This fact is immaterial. The amount of royalty depends on the agreement between the author and the publisher as also upon the sale price of the books. The fact, however, remains that by the books being selected and purchased for distribution to school and college libraries the sales of those books had gone up and correspondingly the royalty received by the author-members also went up and such author-members thus received financial benefit. It is no answer to say that an author-member is only one of the members of the Assessment Sub-Committee and that the ultimate decision rests with the State Government which may reject any books out of the list of approved books. A similar argument was rejected by this Court in Kraipak's case (AIR 1970 SC 150). The State Government would normally be guided by the list approved by the Assessment Sub-committee. Further, to say that such author-member is only one of the members of the Assessment Sub-Committee is to overlook the fact that the author-member can subtly influence the minds of the other members against selecting books by other authors in preference to his own. It can also be that books by some of the other members may also have been submitted for selection and there can be between them a quid pro quo or, in other words, you see that my book is

> selected and in return I will do the same for you. In either case, when a book of an author-member comes up for consideration, the other members would feel themselves embarrassed in frankly discussing its merits. Such author-member may also be a person holding a high official position whom the other members may not want to displease. It can be that the other members may not be influenced by the fact that the book which they are considering for approval was written by one of their members. Whether they were so influenced or not is, however, a matter impossible to determine. It is not, therefore, the actual bias in favour of the author-member that is material but the possibility of such bias. All these considerations require that an author-member should not be a member of any such committee or sub-committee .... "

Relying upon the said observations, Mr.Sanjanwala argued that in view of the fact that Mr.Haren Pandya had filed earlier petition and the same was pending at the relevant time, the possibility of bias cannot be ruled out. According to him, therefore, Mr.Pandya should not have continued to be a member of the Sub-committee and further, the report of the Sub-committee was also not given to him and, therefore, also, the decision is contrary to the principles of natural justice.

24. Mr.Sanjanwala further relied on the decision of this Court in Kumkum Prakashan v. State of Gujarat & Ors., 1989(2) GLR 1109, wherein this Court was dealing with a matter of selection of books for the children. Two of the members appointed in the Committee to select books were interested in the authors of the books and, there was a challenge to the impartiality of the members by other publishers. In the said decision, this Court referred to the decision of the Honourable Supreme Court in M/s. J. Mohapatra & Co. (supra) and the Court held as under :-

> "... It is clear that there is no need for actual proof of prejudice but it is enough that there is a reasonable suspicion in the minds of those who are aggrieved by the presence of a particular individual in the Committee. We lay stress upon the reasonable suspicion since every suspicion

> cannot be considered as reasonable. Hence, it depends upon the facts of each case in a given circumstance. Nothing is to be done which creates even a suspicion that there has been an improper interference in the course of justice. Hence, we have to see whether there is any reasonable suspicion by the party concerned which would spell out bias on the part of some members of the Committee in the selection .... "

As against that, Mr.Shelat has argued that there is already a public interest litigation filed by Mr.Haren Pandya, which is admitted and which is pending in this Court. In that, the Court is also required to consider whether the decision taken by earlier Government was just and proper or whether it was contrary to public interest, whether it was passed to favour the Trust, which was managed by the Chief Minister, in whose tenure the decision was taken. Looking to the facts and circumstances of the case, we are of the opinion that even though it is true that Mr.Haren Pandya was a member of the Sub-committee, which gave report for reviewing the decision regarding giving the land to the petitioner-Trust, it is required to be kept in mind that Mr.Haren Pandya was not the decision making authority. Along with him, there were other members also and ultimately, the relevant facts were considered by the Government for reviewing the decision, i.e. other applications, which were pending at the relevant time, of similar prayer, Sector 8 not meant for opening of college, some of the correspondence carried on by the office of the Chief Minister, etc. In view of the aforesaid facts and especially when even pubic interest petition is pending before this Court, wherein this Court admitted the petition and granted interim order, it cannot be said that simply because Mr.Haren Pandya was a member of the Sub-committee, the ultimate decision was taken at his behest. As stated earlier, Mr.Pandya had no say in taking final decision in this connection. The report of the Sub-committee is merely of a recommendatory nature. In view of the aforeaid fact, it cannot be said that the decision arrived at by the Government is in any way illegal, contrary to the principles of natural justice or biased. The Government has filed detailed affidavit-in-reply in the present petition, pointing out as to how the decision taken earlier was contrary to law and was contrary to public interest. In view of the facts and circumstances of the case, we do not find any substance in the argument of Mr.Sanjanwala that because of presence of Mr.Haren Pandya, who was having bias

against the petitioner, the ultimate decision is vitiated. In any case, the Committee was constituted only in order to find out whether there was any illegality or irregularity in some of the decisions taken by the earlier Government. For coming to the conclusion and arriving at a subjective satisfaction, the Committee was constituted. We have also considered the affidavit filed by Mr.Haren Pandya and we are of the opinion that it cannot be said that the ultimate decision taken by the Government was vitiated simply because Mr.Pandya was a member of the Sub-committee, which Sub-committee was appointed to review some of the decisions taken by the earlier Government.

Further, in the pubic interest litigation, after going through the records of the case, we have found earlier that Shri Vaghela has misused his position in getting the land in favour of his own Trust. In that view of the matter, even otherwise, subsequently committee was appointed or whether it had given opinion or not, may not be of much importance.

25. Mr.Sanjanwala further argued as the sixth point formulated above that in the present petition, the stand taken by the Government in its reply is contrary to the affidavit-in-reply filed earlier, i.e. in earlier petition filed by Mr.Haren Pandya, being Special Civil Application No.4909 of 1997. We cannot ignore the fact that when earlier petition was filed, the decision taken by the earlier Government was under challenge and Shri Shankersinh Vaghela was the Chief Minister at the relevant time. That affidavit-in-reply has not dealt with all necessary points involved in the present petition at all. In the present affidavit-in-reply, detailed averments have been made. As per the records of the case details have been given in the reply. It has also been pointed out that sector 8 was not meant for establishment of college. It was pointed out that at the relevant time, other applications were pending. All these factual aspects which are relevant to decide the case were either deliberately or for some other reason, not stated in the earlier affidavit-in-reply. The deponent of the affidavit-in-reply, therefore, has not stated all correct facts in his earlier affidavit-in-reply. We may caution the Government Officers who are filing reply affidavit in the Court to be careful at the time of filing reply affidavit, because ultimately, based on such reply, the Court is taking decision one way or the other. The Government Officers, who are filing affidavit-in-reply in the Court have to file affidavit-in-reply on the basis of record of the

case and such affidavit-in-reply is required to be filed without fear or favour or without any influence. It must reflect the relevant record. If affidavit is not filed on such basis, the Court may take strict action against such Officers and such Officers will be guilty of contempt of court for not stating correct facts in the affidavit-in-reply. In the facts and circumstances of the case, however, we do not propose to take any action against the deponent who has filed affidavit-in-reply earlier.

We, therefore, do not find any substance in the said argument of Mr.Sanjanwala regarding the decision being contrary to the principle of natural justice or decision being bad in law or that the said decision is bad in view of not giving opportunity to the petitioner before cancelling the grant. However, we are of the opinion that if public interest litigation was not pending before this Court, then the question regarding passing the impugned order without hearing the petitioner may have some importance. However, the very grant in favour of the petitioner-Trust itself is subject matter of petition, which is pending before this Court. In that view of the matter, even otherwise, we are required to consider whether the allotment made in favour of the petitioner-Trust was legal, valid and proper or not. That being public interest, naturally, questions were required to be gone into in detail by this Court to find out whether the decision taken earlier was in any way influenced by the then Chief Minister, and was bona fide or not and as we have narrated above, there are numerous factors by which it can never be said that there was a bona fide decision in favour of the petitioner-Trust and the said decision was taken with the blessing of the then Chief Minister and undue favour was shown to the petitioner-Trust. In that view of the matter, therefore, we do not find any substance in Mr.Sanjanwala's argument that the subsequent decision by the present Government, cancelling the grant, should be set aside and opportunity of hearing should be given to the petitioner before cancelling such grant.

26. Similarly also we do not find any substance in the argument of Mr.Sanjanwala that the then Chief Minister Shri Shankersinh Vaghela was not present when the Cabinet took the decision to allot the land in favour of the petitioner-Trust or that he had not played any role in the matter of allotment of land to the petitioner-Trust. As we have indicated above, after going through the file in question, we are of the opinion that there was an active influence of Shri Shankersinh

Vaghela, which has resulted into the decision of granting land in favour of the petitioner-Trust. We are not repeating our reasons in this behalf as we have already dealt with the same in earlier paragraphs of this judgment.

27. So far as the contention of Mr.Sanjanwala regarding possession being handed over to the Trust and Sanad being executed in favour of the petitioner-Trust is concerned, it is no doubt true that the Sanad has already been executed. However, we do not find any substance in the argument of Mr.Sanjanwala that unless there is a decree from the Civil Court, such possession cannot be taken away from him. According to Mr.Sanjanwala, since the petitioner-Trust has acquired title over the land, he cannot be deprived of the possession unless the Government obtains decree for possession from the Civil Court in this behalf. Mr.Sanjanwala in this connection relied upon the judgment of this Court in Patel Raghav Natha v. G.F. Mankodi, VI GLR 34. This Court, in the aforesaid case has held that when as a result of a decision under Section 65 of the Land Revenue Code or under any other provisions of law, there is an agreement entered into between the Government and a subject, then the Government has no jurisdiction under Section 211 to revise that decision so as to affect the agreement or to revise any part of the agreement. A Kabuliyat passed by an occupant in Form F(1) is not an agreement, and it is only a formality performed at the end of the enquiry and it is a part of proceeding nor has any greater sanctity than the proceeding itself. Therefore, under the powers vested in the Government under Section 211 of the Code, the Government has the right and jurisdiction to revise the terms of the Kabuliyat as well as to cancel it in a fit case. But if a document is an agreement between the Government and a subject, it is beyond the ken of the powers vested under Section 211 of the Code. Relying upon the said judgment, Mr.Sanjanwala has argued that once there is a Sanad issued in favour of the petitioner-Trust, title has already vested in their favour and, therefore, unless there is a decree from the competent Civil Court, it is not open for the Government to exercise powers under Section 211 of the Land Revenue Code and the Government cannot revise that decision.

Against the aforesaid argument, Mr.Shelat, learned Additional Advocate General, relied upon the judgment of the Honourable Supreme Court in L.I.C. of India and another v. Consumer Education and Research Centre and others, AIR 1995 SC 1811. In paragraph 28 of the aforesaid decision, the Supreme Court has observed as

under :-

> "... The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of pubic law element or public character are amenable to Judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the Corporation bears public character with an imprint of public interest element in their offers with terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, the writ petition is maintainable to test the validity of the conditions laid in Table 58 term policy issued by Life Insurance Corporation and the party need not be relegated to a civil action .... "

28. Mr.Shelat, learned Additional Advocate General, has also relied upon the decision of the Apex Court in M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors., JT 1999(5) SC 42. In paragraph 68, the Apex Court held as under :-

> "... Valuable land in the heart of commercial area has been handed on a platter to the builder for it to exploit and to make run away profits. As a matter of fact on the terms of the agreement Mahapalika has been completely ousted from the underground shopping complex for an

> indefinite period. It has completely abdicated its functions ....

In paragraph 69, the Apex Court has further held as under :-

> "... The land of immense value has been handed over to it to construct underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder .... "

29. Reverting to the facts of the case, large area of land has been allotted to the petitioner-Trust by bypassing all the norms and without considering applications of others at a throwaway price. The agreement in question, therefore, can never be said to have been executed in accordance with law. The Government decision can never be said to be in any way in conformity with public interest. On the contrary, it was a decision which can be said to be atrocious and contrary to public interest and was taken only with a view to oblige the concerned Chief Minister at the relevant time. It is also pertinent to note that when the matter was filed and immediately having come to know about the same, Sanad was executed. Execution of Sanad also in a hurried manner is also clearly indicative of the fact as to how the Government thought it fit to oblige the Trust by bypassing all the morals and ethics. In that view of the matter, the decision taken to review and cancel the grant of the land in favour of the petitioner-Trust is absolutely justified. Even if no such decision was taken, then, looking to the facts and circumstances of the case, we would have passed similar order in the public interest petition which is already pending in this Court. It was expected from the Trustees of the petitioner-Trust to gracefully hand over possession to the Government. Mr.S.N.Shelat, Additional Advocate General, has also stated that if the petitioner, after handing over the possession, applies for the grant of the land for their educational institution, the Government will take decision objectively without keeping any grudge and even the priority from that date will be given, i.e.

on the date on which they made the application. However, the petitioner-Trust has not agreed to hand over the possession and, therefore, ultimately, the matter was required to be decided on merits.

We have formulated arguments of Mr.Sanjanwala as points (1) to (6) and while dealing with the main points (1), (2), (3), (4) and (6), point (5) has also been covered and hence, point (5) has not been separately dealt with.

30. We accordingly do not find any substance in Special Civil Application No.4938 of 1999 filed by the petitioner-Trust. The same is, therefore, accordingly dismissed. Rule is discharged. Interim relief stands vacated. However, it is made clear that if the petitioner-Trust applies for allotment of land for educational purpose, the State Government is directed to consider that representation in accordance with law.

31. In view of our decision in Special Civil Application No.4938 of 1999, it is not necessary to give any direction in Special Civil Application No.4909 of 1997 and it stands disposed of accordingly.

32. So far as Special Civil Application No.4861 of 1997 is concerned, the petitioner has challenged the action by which land has not been allotted to the petitioner for the purpose of running his school. In the said Special Civil Application, the petitioner has relied upon the instance of allotment of the land in favour of Gandhinagar Charitable Trust. The petitioner has annexed the order at Annexure `B', wherein he was informed that the question of allotment of land without public auction is under the consideration of the Government and after the decision is taken, its application will be considered on merits. It seems that, thereafter, there is no decision one way or the other on the basis of the petitioner's application. In that view of the matter, we direct the State Government to process the application of the petitioner Shradha Kelavani Mandal, which is the petitioner in Special Civil Application No.4861 of 1997, on its merits and decide the said application of the petitioner in accordance with law and whatever may be the decision to that effect, may be communicated to the petitioner Shradha Kelavani Mandal. There are other 73 applicants. The State Government must decide all the applications in accordance with law.

With these observations, we dispose of Special Civil Application No.4861 of 1997, with no order as to

costs.

Orders accordingly.

September 21, 2000 (B.C. Patel, J.)

(P.B. Majmudar, J.)

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(apj)